# ANTI-SOCIAL BEHAVIOUR (NORTHERN IRELAND) ORDER 2004

S.I. 2004 No. 1988 (N.I. 12)

# EXPLANATORY MEMORANDUM

### **COMMENTARY ON ARTICLES**

Title and commencement

**Article 1** provides the title of the Order and deals with its commencement.

Interpretation

**Article 2**attracts to the Order the provisions of the Interpretation Act (Northern Ireland) 1954 and defines certain terms used within the Order.

Anti-social behaviour orders on application to magistrates' court

**Article 3** sets out provisions in respect of anti-social behaviour orders made on application to a magistrates' court.

The effect of paragraph (1) is to enable a relevant authority, that is a district council, the Chief Constable of the Police Service of Northern Ireland or the Northern Ireland Housing Executive ("the NIHE"), to apply for an anti-social behaviour order to be made in respect of any person aged 10 or over, provided that certain conditions are fulfilled. These conditions are that the person has acted in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and that such an order is necessary to protect relevant persons from further anti-social acts by him. "Relevant persons" means

- (a) in relation to a district council, persons within the district of the council;
- (b) in relation to the Chief Constable, persons within Northern Ireland;
- (c) in relation to the NIHE persons residing in premises provided or managed by the NIHE or persons in the vicinity of such premises.

As these orders will be civil orders, hearsay or professional evidence will be admissible, therefore it will not be necessary for those who have been directly affected by the behaviour to give evidence of the effect of the behaviour on themselves. It will be sufficient for a witness with appropriate expertise to observe events and produce evidence of the events which would illustrate that the behaviour would be likely to cause, for example, harassment to anyone subject to it. This is an important safeguard because often those directly affected by anti-social behaviour are reluctant to give evidence, because of fear that they may be targeted in the future. Under paragraph (3) a magistrates' court is enabled to make an order which prohibits the defendant from doing anything in the order. Prohibitions should be reasonable, proportionate, realistic and practical. It is intended that conditions should be specific, for example in matters of time, if someone is being prohibited from an area at certain times, or when referring to exclusion from an area, boundaries should be made clear by use of street names. Prohibitions should also cover acts which are pre-cursors to criminal acts, such as entering a shopping centre, and situations where the defendant may incite others to engage in anti-social behaviour. Paragraph (5) ensures that the prohibitions imposed by an order should be those which are necessary for the purpose of protecting persons in a defined area, or indeed the whole of, Northern Ireland from anti-social acts by the defendant. It is intended that the court will decide the duration of an order, although, under paragraph (6) the minimum duration is set at two years. The duration of the order should not be a reflection of the nature of the conduct of the defendant, but rather the period of time deemed necessary to protect the community.

# This Explanatory Memorandum refers to the Anti-social Behaviour (Northern Ireland) Order 2004No. 1988 (N.I. 12)

Paragraphs (7) and (8) provide that application for early discharge of the order within two years of the date of service of the order will only be possible with the agreement of the relevant authority and the defendant. Under paragraph (7) applications may also be made by either party to vary the ASBO.

Paragraphs (9) to (11) make provision for appeals to the county court against the making of an ASBO.

### Interim anti-social behaviour orders on applications under Article 3

**Article 4** provides that interim orders may be made by a magistrates' court in circumstances where the main application has not been determined. An order under this Article can prohibit a defendant from doing anything described in the order and shall be for a fixed period. Such an order may be varied, renewed or discharged and, if it has not already ceased to have effect, it ceases to have effect on the determination of the main application for an ASBO. A person can appeal to the county court against the making of an interim order under this Article.

## Applications under Article 3: consultation and legal aid

**Article 5** contains a statutory requirement for the body making the application to consult with its counterparts about whether the application should be made and about the proposed content of the application. This is necessary in order to avoid the possible risk of parallel proceedings being taken in respect of the same behaviour, for example, the anti-social behaviour may be such that it leads to a criminal charge. It is not intended that one of the relevant authorities should bring an application for an ASBO at the same time as criminal proceedings for the same behaviour are underway. Para 5 (4) provides for legal aid.

Anti-social behaviour orders on conviction in criminal proceedings

**Article 6** makes provision for ASBOs to be made on conviction in criminal proceedings where the court is satisfied that the convicted person has acted in an anti-social manner, namely in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself and that an ASBO is necessary to protect people within Northern Ireland from further anti-social acts by him. No application from any of the relevant authorities under Article 2 would be necessary. An ASBO can be made by the court either if asked for by the prosecution or of its own motion.

Paragraph (5) provides that it is immaterial whether evidence produced for the purpose of deciding whether to make such an order would have been admissible in the proceedings in which the offender was convicted. This means that hearsay evidence is admissible.

Under paragraph (6) an order made under these circumstances would be made in addition to any sentence or conditional discharge which the court might impose and is not part of the sentence. Paragraph (7) empowers the court to provide for the suspension of certain requirements of an ASBO during a period of detention in legal custody until release from that custody. The minimum duration of an ASBO under Article 6 is two years, during which period the offender to whom the order applies is unable to make an application to have the order varied or discharged.

#### Breach of anti-social behaviour orders

**Article 7** provides that breach of an ASBO will be a criminal offence for which the normal procedures for prosecution of criminal offences should apply. It is intended that cases should be heard summarily in a magistrates' court and on indictment in the Crown Court. Under paragraph (1) the maximum penalty available on summary conviction would be six months' imprisonment or a fine of up to the statutory maximum, or both. The maximum penalty on conviction on indictment would be five years imprisonment, or a fine or both. Restrictions on reporting

**Article 8**makes provision whereby a court, when dealing with proceedings for an ASBO against a child, may direct that no report shall be published in a newspaper or any broadcast which reveals the name, address or school of the child or includes any particulars likely to lead to the identification of the child and that no picture is to be published as being or including a picture of the child. If someone breaches a prohibition by the court under this Article he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 5 on the standard scale, that is £5000.